ASSEMBLY OF MANITOBA CHIEFS

Manitoba

REPORT OF THE JOINT COMMITTEE TO REVIEW AND EVALUATE FIRST NATIONS CASINO PROJECT 2000

October, 2003

Lloyd Stevenson, Co-Chair

Representative, Assembly of Manitoba Chiefs

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ASSEMBLY OF MANITOBA CHIEFS

Manitoba

October 6, 2003

Honourable Tim Sale
Minister responsible for the
administration of the Gaming Control Act
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Dear Sirs:

It is with pleasure we provide to you the final report of the Joint Committee to Review and Evaluate the First Nations Casino Project (2000).

We wish to thank all that participated in providing us advice and counsel and also in the production of this report.

We are hopeful that the views expressed will be of value to you when considering the complex issue of gaming and, in particular, First Nations Gaming.

Respectfully submitted,

On behalf of:

The Joint Committee to Review & Evaluate
The First Nations Casino Project 2000

Preface

In undertaking this review and evaluation, the Committee acknowledges that the contributors to our consultations, deliberations and recommendations have the benefit and challenge of hindsight. The benefit of hindsight gives us a full view of past events; the challenge of hindsight lies in learning from this view and being willing to move forward. Our work during the past several months has focused on the experiences, advice and vision of First Nations' people, leaders and casino proponents, as well as the observations and perspectives of provincial officials and others involved in the different stages of the implementation of this policy initiative. The hindsight, history and past developments led the Committee to view the current situation from an analytical and objective sense thus shaping and providing a blueprint for the resultant conclusions and recommendations.

The Committee wishes to thank all people who made presentations to us during the consultative and research phase of our review. These participants brought their thoughtful, creative and constructive views to our attention, enriched our understanding of this complex issue and contributed to our deliberations and findings. A complete listing of these individuals and organizations is listed in Appendix A.

Nothing in this report is intended to be interpreted so as to abrogate or derogate from the aboriginal and treaty rights of the aboriginal peoples of Canada that are recognized and affirmed by Section 35 of the Constitution Act, 1982.

First Nations Casino Project: Overview and Status

The First Nations Casino Project (FNCP) was initiated in response to the recommendations of the 1997 First Nations Gaming Policy Review (Bostrom Report). In December 1999, a Selection Committee, consisting of representatives of the Assembly of Manitoba Chiefs (AMC) and the Province of Manitoba (Province), was appointed to receive, review and recommend potential casino proposals.

On June 1, 2000, the Selection Committee recommended that five proposals be granted the opportunity to pursue casino development. Since that time, one casino has opened; one proposal is still in development; three proposals will not proceed. The AMC and Province have indicated they are seeking to understand the factors and circumstances that have prevented the successful implementation of these proposals and the overall implementation of this economic development initiative. Our Committee has been tasked with undertaking this project on their behalf.

- ***Project History***

Desjardins Report

In 1995, the Lottery Policy Review Committee (Desjardins Report) made a series of recommendations with respect to gambling activities in Manitoba. However, in submitting its report to the government, the Desjardins Committee acknowledged it felt matters related to on-reserve gaming was beyond its purview, and called for a separate review and recommendations. This Committee's recommendation firmly established the concept that matters related to on-reserve gaming activities are viewed independently of other gaming policy issues. (It should be noted that on-reserve licensing authorities and VLT agreements established this view in the early 1990s.)

Bostrom Report

The decision, in 1996, to proceed with the First Nations Gaming Policy Review, resulted in the First Nations Gaming Policy Review (Bostrom Report) – and the recommendation, among others, that the Province support First Nations' economic development via the establishment of up to five on-reserve casino operations. This report made significant and specific recommendations which were intended to support the implementation of this policy initiative.

Selection Committee

On November 18, 1999, the AMC and the Province signed a letter of understanding covering the terms of reference for the establishment of a jointly-chaired Selection Committee, including its responsibilities and the time frame for its activities.

Jurisdictional Background & Discussion

The decision to proceed with this policy initiative was long-awaited by many First Nations interested in the economic development benefits that have accrued to First Nations governments in other jurisdictions. Further, many First Nations maintain they have sovereignty over on-reserve gaming activities, citing section 81 (m) of the Indian Act. This section permits by-law making power over certain games conducted on-reserve which some First Nations interpret to include gambling. This position was tested in the 1986 Alberta case, R. vs. Gladue. In its ruling, the court found that the Criminal Code delegated regulatory power over gambling matters to the Province of Alberta, not to Indian bands. Nevertheless, assertions and challenges continue to be made on both sides of this debate. Many First Nations are of the view that their self determination and self government are confirmed under Section 35 of the Constitution Act, 1982 which, in their view, includes gaming. Sovereignty assertions, coupled with interest in the Tribal Gaming Compact model in the United States and resulting financial successes by some tribes, are significant factors in Manitoba First Nations' aspirations regarding casino development and operation.

As is demonstrated by jurisdictional research carried out in support of our deliberations (Appendix B), Canadian provinces have chosen to address the issue of First Nations gaming – including casino development, operation and revenue distribution - in various ways. Some provinces have chosen to establish First Nations casinos and accompanying regulatory bodies, others conduct and manage gaming operations with a portion of revenues allocated to First Nations, and still others have chosen to treat on-reserve and off-reserve casino operations the same.

In Manitoba, the terms of reference for the Selection Committee, which resulted from negotiations between the Province and the AMC, were based on the recommendations in the Bostrom Report. These recommendations included permitting the development of up to five destination casinos located on-reserve, featuring a maximum of 300 slot machines and 30 table games at each facility, and related amenities including hotels, restaurants and leisure sites. (This model is based on a similar model for destination casinos in British Columbia.)

This Report also outlined the selection process requirements, the evaluation criteria and the fundamentals of the casino operating model, essentially establishing the casino model and the FNCP regulatory and operational framework. These terms and concepts were subsequently translated into the Request for Proposals (RFP) which directed the Selection Committee's responsibilities to implement and oversee the call for proposals, review and recommendation process.

Following the submission and review of the 12 eligible proposals, the Selection Committee recommended five proposals to the AMC and the Province. This Committee prepared a report outlining the recommended projects, as well as commenting on the challenges that faced the proponents in making business plans into viable business operations. The Committee also commented on the importance of the legislative and regulatory framework required to permit and govern casino operations by First Nations – highlighting the limitations of the loosely conceived operating model articulated in the RFP.

Implementation Committee

Subsequent to the release of the Selection Committee's proposal recommendations, the AMC and the Province established an Implementation Committee to oversee and support the implementation of the proposals. This Committee was responsible for negotiating comprehensive agreements with each of the recommended proponents and the Province covering diverse and complex matters including: accountability for the casino operations and revenues, management and operating fees and financing arrangements, land conversions and municipal requirements and the submission of annual financial audits for review by the Province and the Office of the Auditor General.

Complex negotiations resulted in the Comprehensive Provincial Framework Agreement (CPFA) and the Conduct and Management Agreement (CMA). These documents formally framed the Province's commitment to on-reserve operations and outlined the regulatory regime established by the Manitoba Gaming Control Act and Manitoba Lotteries Corporation's (MLC) responsibilities and authority as required by the Criminal Code of Canada, the Manitoba Lotteries Corporation Act and regulations.

Since that time (June 2000), only one of the five recommended casino projects, Aseneskak Casino located at Opaskwayak Cree Nation, has opened. The project proposed for the Brokenhead Ojibway Nation is still in development. The three other proposals by Swan Lake First Nation, Sioux Valley Dakota Nation and Nisichawayasihk Cree Nation will not proceed. As noted at the beginning of this section, questions about the success, or more accurately the lack of success of the FNCP has resulted in its review and evaluation.

Current Legislative Framework

Gambling is a complex business. The public demands that gaming activities must be conducted fairly, honestly and with integrity. As such, there are limitations and strict controls on the operation of gaming activities, including third party scrutiny and regulation, registration of employees and suppliers, game testing and compliance requirements, financial reporting and accountability procedures and recourse for dispute resolution.

For the purposes of the FNCP, the framework for these requirements and controls are outlined in legislation, regulation and agreements. Our Committee believes that familiarity with this aspect of gaming control will help clarify how gambling is "permitted" by current laws and agreements. The following briefly outlines the different legislation and agreements that comprise the casino operating model and govern casinos in Manitoba.

- The Criminal Code of Canada gives only the Province the right to appoint agents to conduct and manage gaming activities. In Manitoba, the MLC is the only agent appointed to "conduct and manage" casino gaming.
- Manitoba Lotteries Corporation Act, in keeping with section 207(1) (a) of the Criminal Code, appoints the MLC to conduct and manage casinos, as well as video lottery terminals and lottery ticket terminals. The MLC Act specifically permits only the MLC to conduct and manage casinos in Manitoba.
- Manitoba Gaming Control Act empowers the MGCC to regulate certain aspects of the MLC's activities by registering its employees, suppliers and machines. The MGCC also ensures the technical integrity of games via testing and monitoring. The MGCC approves all casino employees, suppliers and machines.
- Conduct and Manage is an important concept and is defined as being the "operating mind" of the gaming activities. The courts and academics have interpreted this to include the selection and ownership of gaming equipment,

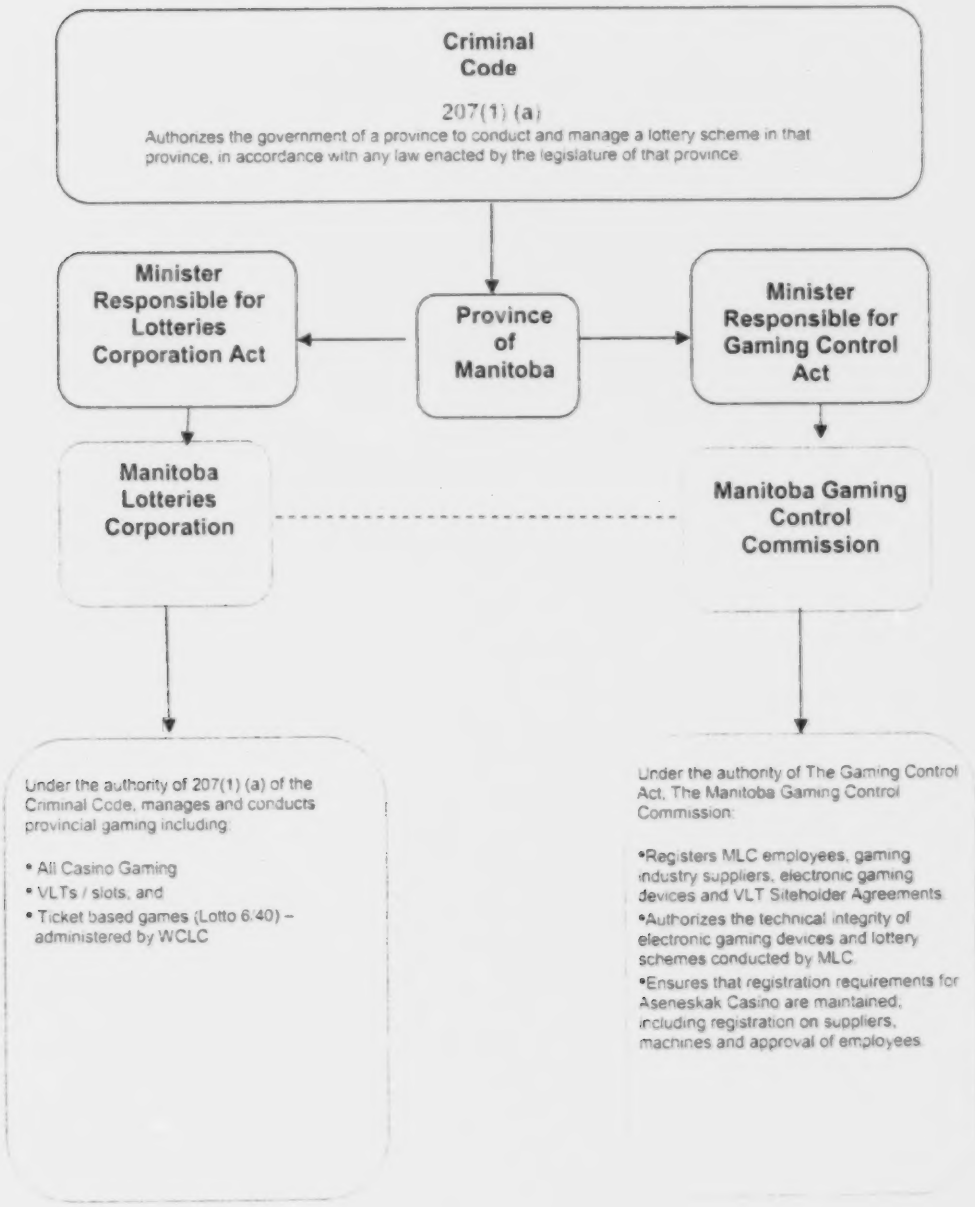
oversight of security matters, budgeting, policy setting, determining prize payouts, controlling gaming proceeds and conducting compliance audits. The concept distinguishes conduct and manage from operational responsibilities, which include training, staff development, management expertise and operational development.

- The Comprehensive Provincial Framework Agreement (CPFA) between the Province and each proponent is the definitive agreement and directs and authorizes all other agreements. It outlines responsibilities and matters including: regulatory requirements, economic development, construction, gaming revenue, audit requirements, dispute resolution and the definition of operating expenses and net profit. Signed copies of this agreement are available from the MGCC.

- The Conduct and Management Agreement (CMA) between MLC and each proponent outlines each party's responsibilities under the "conduct and manage" requirement defined above. This includes the supply and maintenance of gaming equipment, the establishment of policies and directives to ensure consistency of gaming operations, appointment of individuals to support conduct and management of gaming and established accounting and audit practices in keeping with the management of public money. Signed copies of this agreement are available from the MLC.

The organizational chart on the next page details the current framework for all gaming operations in Manitoba, including charitable gaming.

Casino Legislative and Regulatory Structure: Current


Criminal Code
207(1) (a)
Authorizes the government of a province to conduct and manage a lottery scheme in that province, in accordance with any law enacted by the legislature of that province.
Minister Responsible for Lotteries Corporation Act
Province of Manitoba
Minister Responsible for Gaming Control Act
Manitoba Lotteries Corporation
Manitoba Gaming Control Commission
Under the authority of 207(1) (a) of the Criminal Code, manages and conducts provincial gaming including:
• All Casino Gaming
• VLTs / slots, and
• Ticket based games (Lotto 6/40) – administered by WCLC
Under the authority of The Gaming Control Act, The Manitoba Gaming Control Commission:
•Registers MLC employees, gaming industry suppliers, electronic gaming devices and VLT Siteholder Agreements.
•Authorizes the technical integrity of electronic gaming devices and lottery schemes conducted by MLC.
•Ensures that registration requirements for Aseneskak Casino are maintained, including registration on suppliers, machines and approval of employees.

FNCP Review and Evaluation: Process

As noted, the primary goal of the FNCP is to support economic development opportunities – including job creation, capital project development, training and hospitality related industries. Unfortunately, and to the frustration of First Nations and others involved, the translation of a theoretical concept to the operation of a thriving casino operation faced a number of obstacles and challenges that have, to date, hampered the accomplishment of this goal.

Consequently, the AMC and the Province agreed to review and evaluate the FNCP; to identify policy gaps and areas of concern; and to seek solutions to overcome the concerns and problem areas. The task before our Committee was jointly established by the AMC and the Province via terms of reference that have guided our meetings, research, discussions and the preparation of this report.

Briefly, these terms (Appendix C) directed a joint review and evaluation of the FNCP and sought recommendations for consideration by the AMC and the Province. As such, the scope of our review encompassed the following areas:

- casino proposal selection and implementation process and outcome;
- legislative and regulatory framework; and
- financial and business factors.

In seeking information and input on these areas, our Committee pursued consultation with stakeholders; a research project on other provinces' approaches to on-reserve casino development; legal advice on Manitoba's legislative and regulatory regime; a review of relevant research on aboriginal gaming in North America and on-site consultations in Saskatchewan with provincial government officials and First Nations leaders about the success of Saskatchewan's casino experience.

- ***Consultation with Stakeholders***

In order to obtain the broadest views on these critical issues, our Committee embarked on targeted consultations with stakeholder groups, expert advisors, casino proponents, provincial agency representatives and other interested groups. Thirty six letters (examples provided in Appendix E) seeking participation were sent to each Tribal Council and all First Nations involved in responding to the FNCP RFP. Members of the Implementation Committee, selected government agencies and departments, and Executive and staff of the Assembly of Manitoba Chiefs were also requested to participate. Consultations began in late April and concluded in early June (a complete listing of presenters is outlined in Appendix A). Our Committee also traveled to Saskatchewan and met with representatives from Saskatchewan Indian Gaming Authority and the Saskatchewan Liquor and Gaming Authority.

The intent of these meetings was to gather and elicit the views and experiences that could be expected from such a diverse group of individuals and organizations; our Committee was not disappointed. It was evident, through the comprehensive oral and written submissions, that much thought, concern and deliberation had been focused for the benefit and education of our Committee. Our findings and recommendations are based in large part on the consultative phase of our review.

- ***Jurisdictional Review***

The terms of reference for the FNCP review also outlined the need to gather relevant information from other provincial jurisdictions with similar First Nations casino gaming activities and responsibilities. In order to support its research and deliberations, the Committee requested the Manitoba Gaming Control Commission (MGCC) to establish and implement a work plan to seek information about the legislative and regulatory regimes, operational policies and practices, experiences and future plans of jurisdictions with First Nations casino stakeholders.

Acting on the recommendations outlined in the terms of reference and under the direction of our Committee, the MGCC identified Ontario, Saskatchewan, Alberta and British Columbia as having a casino policy process with sufficient First Nation stakeholder interest to warrant meaningful analysis. Nova Scotia was added to this list due to the fact that a portion of revenue accrues to First Nations from the Sydney casino project. This process documented the policies and processes in place in other Canadian jurisdictions for selecting, implementing and operating casinos with First Nation stakeholders.

To remain consistent with the focus outlined in the terms of reference, the jurisdictional research identified the following areas for comparison: casino regulation, conduct and management of casino gaming, casino and gaming equipment ownership, revenue allocation, site/operator selection, request for proposals process, land status requirements, First Nations approval process, municipal approval process, intergovernmental relationships, operational matters and available statistics on each First Nations casino currently in operation. The summary of these findings is attached as Appendix B; the complete report and accompanying documentation is available from the AMC and the MGCC.

Review and Evaluation Findings

As noted in the previous section, the terms of reference directed our Committee to review and evaluate three broad aspects of the FNCP; the terms also outlined expected outcomes for each aspect as identified below:

1. **Selection Committee Process and Outcome**
   Expected Outcome: An evaluation of the Selection Committee process, identifying strengths and limitations, based on the terms of reference established by the Province and the AMC, November 18, 1999.

During our meetings with stakeholders, our Committee noted common themes and concerns. Not surprisingly, we also heard divergent views on some issues. However, the comments about the process for proposal submission, evaluation and recommendation were very consistent.

To begin, many First Nation presenters felt that the ***compressed timeline*** of approximately 10 weeks (FNCP chronology, Appendix D) limited their ability to prepare comprehensive proposals. As well, some First Nations advised that their submissions cost more money because they had to hire outside consulting expertise and pay premium prices to meet the established deadlines.

The timetable for the submission and selection process was as follows:

January 19 – Release of RFP

February 21 – Requests for information or clarification

March 17 – Responses to questions

March 31 – Submission deadline/Proposal review and evaluation

May 31 – Recommendations to Province and AMC

(Our Committee notes that by contrast, the CPFA and CMA drafts took nine months to be prepared and released to recommended proponents; an issue of frustration raised by recommended proponents.)

During the proposal preparation process, proponents were invited to ***submit questions and seek clarification of the RFP's terms and conditions***; 185 questions were submitted. A review of these questions reveals that many are similar, identifying common issues and themes. A review of these questions and the answers prepared in response indicates limitations of the RFP. The most common are highlighted:

- Perceptions of MLC's conflict of interest related to its conduct and management role, and as primary casino competition in the province.
- Lack of information about provincial gaming standards, policies and practices.
- Although the length of the operating agreement (originally four years) was proposed by the AMC and agreed to by the Province there is the perception that the Province set this term. At AMC's request, the agreement was extended to seven years to facilitate capital financing.
- Concerns with the Selection Committee limiting proponents' ability to make public statements and issue news releases.
- Questions about Treaty Land Entitlement and land conversion.
- Uncertainty about site selection particularly related to municipal governments and related approval processes and interest in Winnipeg as a casino site.
- Concerns about the limited time to prepare and submit proposals.

Perhaps most significantly, a number of questions focused on the foundation for the ***regulatory and operational framework***. The number and breadth of questions in this regard leads our Committee to postulate that the RFP inadequately laid the foundation for the regulatory and operational framework. Further, presenters noted that this caused

difficulties during proposal preparation, was noted via recommendation by the Selection Committee itself, and was raised during negotiations with recommended proponents.

Our Committee notes that gaming is a complex, carefully legislated and regulated business. While 63% of Canadians say gambling is an acceptable activity (Canada West Foundation, 2000) they also expect these activities to operate within a carefully controlled framework that ensures public accountability, financial transparency and fair play. As such it is vital that the legislative and regulatory environment for gaming policy development and implementation be clear. The regulatory and operational framework for the FNCP, including authorities and covenants, was not fully developed until the first CPFA and CMA were signed in September 2001.

Interestingly, a review of the RFP reveals the incredible ***depth and breadth of information required of proponents***. This included detailed business plans, budget and financing arrangements, principal participants, security plans, construction details, development of related amenities, employee training, financial records, matters related to adjacent local governments and plans to mitigate problem gambling. Our Committee does not doubt the cost for some of the proposals was significant, or that the amount of work required and accomplished was considerable.

While acknowledging that the Bostrom Report did, in fact, recommend the ***Proposal Contents and Evaluation Process*** (Part III, RPF), which were agreed to by the AMC and the Province, should a determination be made to proceed with a second round of submissions, consideration should be given to a more modest process – perhaps seeking expressions of interest within clearly defined guidelines. The process could then proceed with more fully developed business plans and financing arrangements. (Financing and business matters are dealt with more specifically later on in our report.)

The RFP required significant information related to the ***proposed casino's location***. From our Committee's perspective, the issue of site selection was very controversial. The Bostrom Report recommended that First Nations casinos should be located on-

reserve. The Terms of Reference went one step further, at the request of the AMC, by permitting sites proposed for conversion of existing municipal land or Crown land.

Because the RFP did not limit site locations beyond stating that the casinos must be located on-reserve before they could become operational, a number of questions and issues arose in communities about the location of casino operations. Plebiscites were held in each of the communities proposed for casino development. Subsequently, three of the five recommended casinos did not proceed because of lack of municipal support for land conversion.

Our Committee notes that the concept of "urban reserve" development is new in Manitoba; the Department of Intergovernmental Affairs indicates there are no "urban reserve" developments in Manitoba, although there are properties owned by First Nations in municipalities throughout the province. While those who proposed land conversion did so of their own choice and accord, given that land conversion is in and of itself a complex, multi-jurisdictional issue, tying it to casino development created additional challenges.

This being said, the benefits of ***on-reserve development*** are well understood (taxation, local employment, increased tourism, destination facilities and on-reserve economic development). However, our Committee notes that casino development, like any business development, must be located in a strong market area if economic aspirations are to be achieved. As such, and notwithstanding the benefits noted above, consideration should be given to off-reserve development in the event the AMC and the Province determine to proceed with additional casino development.

As noted earlier, our Committee conducted jurisdictional research and examined processes in other provinces. As such, we are well aware, as are most people, of the potential for political interference – and the price extracted should a selection process be compromised. Having said this, both the AMC and the Province are to be commended for ***maintaining the integrity of the selection process***. The RFP clearly prohibited

proponent contact with members of the Selection Committee, Ministers, their staff, MGCC and MLC board members, and those advising the Committee. The very nature of government permits and encourages interest based lobbying. However, our Committee feels very strongly that the strict prohibition against lobbying and political interference ensured a clean selection process, based on the merits of each proposal – and supports this prohibition should a second round be considered.

Following the acceptance of the Selection Committee's recommendations by the AMC and the Province, a number of proponents (both recommended and not recommended) sought information and comment on their and others' proposals. It is evident there continues to be frustration that ***evaluation*** information was not provided. Our Committee notes that the Selection Committee was directed only to recommend up to five proposals – there was no direction to provide feedback.

Moving through to the ***implementation process***, comments from presenters indicated that many of the challenges experienced during this stage could have been alleviated or even avoided. The Committee agrees that it took too long to receive the draft agreements – nine months from the date the recommended proposals were announced to February 28 when the draft agreements were sent to all proponents. Further, matters that many First Nations thought should or would be negotiable were not negotiable. Again, these misperceptions and misinterpretations may have been clarified by including a comprehensive regulatory and operational framework as part of the RFP. The Province, including the MLC and MGCC, are bound by legal requirements outlined in the Criminal Code. As noted earlier, the conduct and management imperative for all casino operations comes under the authority of the MLC. For the recommended casino proponents involved in agreement negotiation this was, not surprisingly, perceived as a conflict of interest; this continues to be an area of concern. Despite these concerns, the required agreements were signed with two proponents and each are meeting its commitments and covenants under the agreements.

From an implementation perspective, there is one major issue outstanding – the establishment of the ***First Nations Trust*** is still awaiting finalization by the AMC. During our consultations we noted that there is a perception that the Province set the revenue sharing formula. To clarify this, the Bostrom report originally recommended a 90%/10% split between First Nations and the Province. At the request of the AMC, the Province agreed that 100% of revenues would accrue to First Nations. Based on this formula, the AMC set the 70%/27.5%/2.5% revenue formula. At present, the Province is working with AMC on the second draft of a proposed trust.

As a final comment in this section, our Committee notes with some concern, that during consultations, several groups indicated that they felt the ***competitive nature of the submission process*** was divisive within Manitoba's First Nations community; essentially pitting First Nation against First Nation. Should plans be made to open up other opportunities in the future, consideration should be given to developing a model based on consensus and cooperation.

2. Legislative & Regulatory Framework

Expected Outcome: An evaluation of the current legislative and regulatory framework. Deliberations on this issue must include consideration of legislative amendment of The Gaming Control Act.

In order to provide context to all of our comments and to underscore its importance, the current legislative framework was outlined earlier in this report. Gambling is a complex, heavily regulated industry – in Manitoba and in all other North American jurisdictions. The fact that gambling activities are permitted only through the Criminal Code reminds us of the importance Canadian society places on the regulation and control of these activities. A solid legislative and regulatory framework ensures the integrity of game operations, requires oversight and financial transparency and clarifies the public's expectations with respect to the ownership and operation of gaming activities. Further, it ensures that the revenues from gaming benefit our communities.

As noted in the previous section, clarification of the legislative and regulatory framework would have significantly benefited the proposal preparation, submission and implementation processes. Further, during our consultations presenters underscored their frustration with laws that prevent their direct conduct and management of casino gaming.

The challenge for First Nations and government agencies is that the current legislative framework:

- permits only the MLC to legally manage and conduct electronic gaming; and
- is contrary to First Nations' aspirations and assertions of sovereignty and self-determination.

This has put MLC in the awkward position of being required by law to be directly involved in the day to day operation of the electronic gaming at a casino perceived to be its direct competition. It is clear that First Nations view this as a conflict of interest. Further, for those unfamiliar with the complexities of gaming law in Canada, this operating environment was greeted with some surprise.

Beyond the question of legislation is the issue of regulation. Many presenters noted the importance of regulatory control and oversight. At present, the MGCC is responsible for the approval of all employees, suppliers and partnership arrangements. Before approval is given for operational business relationships, casino proponents must disclose to the Province and to MGCC in writing: all sources of direct and indirect financing; and the terms and conditions for financing relied upon in the development and operation of the casino. These financing and partnership arrangements are subject to approval by MGCC.

These regulatory requirements are similar to those in place in jurisdictions throughout North America. They ensure the integrity of those involved in the ownership and operation of gaming facilities and permit appropriate public accountability. Further, standard regulatory requirements permit equity for all casino operations and contribute to cost effectiveness of that control. Finally, our Committee notes that the gaming industry

is well aware that issues and incidents that compromise the integrity of operations in one jurisdiction, can influence people's perceptions of industry integrity in other jurisdictions. Regulatory independence is key to players' assurance that the games they participate in are conducted honestly, with integrity and in the public interest.

While neither the current Manitoba Lotteries Corporation Act, nor The Gaming Control Act envisioned managing, operating or regulating casinos owned by an entity other than the Province, a combination of law and agreements has created a solid, if complex regulatory environment. Nevertheless, because the current framework permitting on-reserve casino development is based largely in policy, rather than legislation, our Committee is concerned about its fragility, particularly if further development is considered.

Should this option be pursued, in light of the FNCP's objective to create and sustain economic development opportunities, related legislation (Manitoba Lotteries Corporation Act and Gaming Control Act) should be reviewed and renewed to provide First Nations businesses with a solid environment upon which to make and implement plans and decisions. Whether further opportunities are contemplated or not, legislative amendment should be strongly considered in order to clarify and strengthen First Nations' responsibilities for the conduct and management of casino gaming.

Finally, and as directed by our terms of reference, our Committee offers the following observations on the FNCP and its relationship to First Nations Gaming Commission Agreements. These agreements between the Province and First Nations create on-reserve licensing authorities for charitable gaming activities under section 207(1) (b) of the Criminal Code. The Bostrom Report and the RFP both underscored the importance of compliance with all gaming laws and regulations, including the Gaming Commission Agreements. In preparation for registration with the MGCC, all First Nation partners must ensure their gaming activities are in compliance with all laws and regulations. This is a critical aspect of game integrity and reinforces players' confidence in gaming

activities. Because of the unique nature of the gaming business, strong legislative and regulatory tenets are required for successful operations.

3. Financial/Business Factors

Expected Outcome: An evaluation of issues and conditions impacting financial and business outcomes.

Because the FNCP was intended to create economic opportunity for First Nations people, all of the foregoing comments and observations should be construed as matters directly related to casino proposals' financial and business interests and viability. A concise RFP, a clean submission and recommendation process, and a solid legislative and regulatory framework lay the foundation for sound business opportunities and operations. Beyond these items however, our Committee notes there were several issues commonly raised during the course of our consultations and noted during our jurisdictional research activities.

Originally, the AMC and the Province agreed to a four year ***operating agreement*** with a mechanism for review after two years. This was amended at the request of these parties and an addendum was issued (February 22, 2000) to the RFP that increased the agreement period to seven years, with review after two years. The initial length of the operating agreement did not permit adequate time for loan amortization and repayment of capital; seven years is still viewed as minimal. Eventually the initial term for the CPFA was set at seven years, with renewal for an additional seven years. From a business perspective this longer term favours enhanced loan repayment, improves immediate cash flow, and encourages support from traditional lending institutions. Long-term agreement commitments by the Province to First Nations are critical to financial and business well-being. Therefore, the Commission recommends that the province consider increasing the length of the existing agreement to ten years, with one additional renewal term of 10 years.

Several presenters also raised the issue of ***taxation*** and the Province's decision not to forgive retail sales tax on slot machine purchases by the MLC and passed along to casino operators. It is clear that the Province views taxation and gambling as two distinct issues, yet First Nations view the taxation of goods destined for use on a First Nation as a sovereignty issue. According to the Department of Finance, because the MLC is the sole entity that can purchase gaming equipment and machines and retains ownership of the slot machines, the MLC must pay sales tax on all such equipment. Our Committee understands that this is contrary to First Nations' interests and assertions. However, the current ownership structure, based on the conduct and management imperative outlined in 207(1) (a) of the Criminal Code, does not permit otherwise.

Another item raised was the ***300 slot machine/30 table game*** limit recommended by the Bostrom Report, and outlined in the RFP. From a business perspective, this formula is artificial; articulated as a model as opposed to a market reality. Similarly, the recommendation to proceed with the development of up to five casinos did not adequately acknowledge market capabilities or limitations. The policy decision to proceed with the operation of up to 1,500 slot machines by First Nations can only be expected to create economic benefits in positive market conditions.

In Winnipeg, the McPhillips Street Station and Club Regent casinos have returned significant financial and employment returns for the Province through the operation of approximately 60 table games and just under 2,400 electronic player stations. It is not surprising that First Nations' leadership would aspire to similar benefits. However, it is not certain that a third casino could be sustained in an already established market; nor, in our Committee's opinion, have ***market opportunities*** been appropriately assessed. Regional considerations, existing market competition (there are over 30 casinos operating within an eight hour drive of Winnipeg), and complementary amenities should all be considered in an independent and comprehensive market assessment should other development be pursued.

Other business related suggestions our Committee found noteworthy included:

- the development of an education/management interchange to permit the development and sharing of expertise and education on gaming management and operational matters;
- a less competitive RFP process that encourages consensus and cooperation between First Nations; and
- consideration of development of a single First Nations casino, owned and operated for the benefit of all First Nations.

Before concluding this section, our Committee feels it is important to note that some issues brought forward during consultations were beyond the scope of the FNCP review and evaluation established by the terms of reference. In receiving and considering this information, our Committee again notes the benefit and challenge of hindsight. In making the following recommendations we reiterate the importance of learning from past experiences and being willing to move forward.

Recommendations Summary:

Guideposts for Gaming Policy: Sovereignty and the Criminal Code (Canada)

In reviewing the foregoing, our Committee notes there have been many other Committees, terms of reference, reports and recommendations, including the Desjardins Report, the Bostrom Report, the Selection Committee and the Implementation Committee. It is clearly not a lack of interest or study that has brought us to this review and evaluation.

Some may argue that it is a lack of will, or commitment, or a disregard for First Nations' economic interests. Others may perceive competing interests, racism or ignorance as hampering on-reserve casino development. However, as Committee members appointed to represent the AMC and the Province respectively, it was necessary for us to come to an agreement on the most critical factors necessary for the development and success of a gaming policy model to benefit First Nations people and communities.

And so, in pursuing our tasks, the Committee identified two divergent views on the framework for on-reserve gaming activities:

1. It is clear that First Nations view the tenets of sovereignty (self government) as paramount in matters related to gaming.
2. Conversely, Provincial officials are guided, and in some cases bound, by legislation and regulation which holds federal and provincial authority as paramount.

As such, in addressing questions related to the legislative and regulatory framework, our Committee has determined that a successful policy must be based on these two perspectives, which we have come to view as guideposts: sovereignty and the Criminal Code.

This brings us to the crux of this issue: has the casino model (up to five casinos featuring a maximum of 300 slot machines and 30 table games) advocated by the Bostrom Report fulfilled the economic and development aspirations articulated by First Nations, the

AMC, the Province and the RFP? And more critically, is this model supported by the guideposts, provincial legislation, market realities, public support and cooperative spirit required for economic success?

In considering these questions, our Committee chose to look broadly at the First Nations gaming framework. Our Committee understood that our role was not to recommend to either proceed or not proceed with further development, but rather to "identify areas of concern and recommend solutions to overcome the concerns and problem areas".

However, within our mandate to review and evaluate an existing policy, we were well aware that our recommendations should be helpful in the event that a decision is made to proceed with new First Nations gaming policy, including casino development. As such, and based on our consultations, research and deliberation, we make the following recommendations.

1) Establish a sound legislative and regulatory framework for future First Nation casino developments.

Our Committee recommends that the Province, in consultation with Assembly of Manitoba Chiefs, and the First Nations of Manitoba explore the development of legislation which will allow First Nations to directly conduct and manage on-reserve gaming as an agent of the Province, similar to MLC. As an agent of the Province, this organization would be responsible for public reporting and accountability, and meet gaming control regulations via the MGCC. This approach:

- will formalize governance and compliance in law, not policy;
- removes the perceived conflict of interest with MLC;
- allows for direct ownership of gaming equipment by First Nation casino operations;
- permits certainty for financing and business planning;
- permits decision-making as the "operating mind" of the casino, and
- will resolve the tax matter.

The main purpose of this recommendation is to build and maintain a strong operating structure within guideposts of sovereignty and the requirements of the Criminal Code and the concept of "conduct and manage". As noted earlier, this concept has been interpreted to include the selection and ownership of gaming equipment, oversight of security matters, budgeting, policy setting, determining prize payouts, controlling gaming proceeds and conducting compliance audits.

Matters related to honesty and integrity are critical to the operation and success of any casino, and as such, the same standards of oversight and regulation must apply equally to any new operations, as they apply to current operations, including MLC's. Beyond the benefits of uniform regulation and compliance requirements, this approach also focuses on the cost effectiveness of regulatory control measures.

Our Committee notes that the amendments proposed to The Gaming Control Act in the last session of the Legislative Assembly included several provisions to improve and clarify regulation of gaming in Manitoba. We welcome the reintroduction of amendments and any new, required amendments to appropriately frame conduct and management responsibilities provided it is not inconsistent with a new First Nation Gaming Act or Authority.

2) Based on an independent comprehensive market study, undertaken by the Province in cooperation with the AMC, the Province should explore with AMC the possibility of developing one 'significant' casino, with the profits being shared proportionally amongst all First Nations. First Nations would be invited to submit expressions of interest based on the findings and recommendations of the market study.

During the consultation process the Committee heard divergent views of how to proceed with future First Nation casino development. Several presenters recommended individually sponsored First Nation casinos on their own First Nation, while others

presented the concept of a larger casino development sponsored collectively and profits shared amongst all First Nations. This latter view was supported by a majority of those presenting.

To first acknowledge and address the question of individually sponsored First Nations casinos, our Committee closely considered the experiences and outcome of the 2000 FNCP process. Concerns and observations related to this process are extensively reviewed in this report's earlier section, *Review and Evaluation Findings*. Briefly however, the consultations revealed that the RFP preparation, submission and review process was competitive and costly for First Nations. Acknowledging that to date, only one of the five recommended proposals has begun operation, experience indicates the model proposed by the Bostrom Report has not positively translated into the economic benefits intended by provincial casino policy.

In deliberating on the question of individually sponsored casinos, our Committee is not convinced that the economic gains envisioned by First Nations can be accomplished through individually sponsored, small market casino operations. Further, in considering a single significant casino operation, our Committee is cognizant of the financial benefits related to the management and operation of a single property. As such, our Committee has broadly outlined the following considerations:

- that development of a single significant casino be considered, but there be no additional casino development pending an independent market study, commissioned to determine the limits and strengths of Manitoba's gaming market. (The Aseneskak Casino will continue to operate, and the Brokenhead River Casino Resort Inc., project is still in development);
- that the selection of the casino location be guided by the requirement that the area possess the economic factors needed to optimize success;
- that the selection process should use a less costly and more modest process such as an expression of interest within clearly defined guidelines as suggested on page 14 of our report;

- that development, implementation and operations of this business venture be fully funded by First Nations, with no Provincial funding as is the case with the current process;
- that the operating structure be well defined and articulated prior to the call for expressions of interest; and
- that a First Nations Trust be developed to coincide with the new proposed development arrangement to ensure there is fair and proper distribution of any dividends or profits that accrue.

3) The on-reserve development requirement should be softened.

While our Committee understands and supports on-reserve development, we are also cognizant of market advantages, and the challenges faced by proponents that proposed land conversion. Should the Province determine to proceed with casino development, our Committee recommends that a casino can be located on non-reserve land as long as it is owned by a First Nation (or consortium of First Nations). This property could be converted at a later date in keeping with established federal guidelines.

Our Committee notes in particular Saskatchewan's experience with land conversion following casino development and the acceptance by, and positive impact on host municipalities. As noted in Appendix B, there are four on-reserve casino operations in Saskatchewan. Three of these properties were converted to reserve status after the casinos began operating: Northern Lights, Prince Albert; Golden Eagle, North Battleford; and Painted Hand, Yorkton. While urban reserve development is a new concept in Manitoba, municipalities in Saskatchewan report that such developments have been positive in terms of increasing their revenue base and encouraging economic growth.

It appears that Saskatchewan's long-standing experience with land conversion and treaty land entitlement laid the foundation for the land conversion process related to the casino properties. For example, Yorkton has five urban reserves (including the casino development) and while the first was greeted with trepidation, the on-reserve

developments have proven to be an advantage to the community and the relationship between municipal and First Nations governments is described by the mayor of Yorkton as excellent. In examining Saskatchewan's lessons with respect to land conversion, there is much the Province, municipalities and First Nations can learn and benefit from.

4) Casino development should continue to require support and approval of First Nation leadership if located on reserve land, or support by local municipal council if proposed off-reserve.

Our Committee believes that community support will continue to be important to any future casino development. As Saskatchewan's experience indicates, a positive working relationship with local leadership, including chief and council and municipal council, is integral to the success of such a venture. Particular consideration and attention should be paid to the timing of support from these bodies. The process of obtaining support from municipalities and local governments does not require a referendum. The Committee urges municipalities and local governments to consider their support of First Nation casino development as they would for any other business ventures proposed within their jurisdiction. Early formal support for development should be secured and articulated as part of an expression of interest process to clarify and confirm the economic development interests of local governments and communities, minimize pre-development expenses and affirm mutual economic benefits.

5) The recommendation process should be inclusive, cooperative and non-competitive.

We note here the concern of some First Nations that this process not be divisive and encourage potential proponents to work cooperatively for the benefit of all communities. As noted earlier, our Committee encourages an expression of interest submission prepared in response to economic and market criteria. Attention must be paid to developing a positive submission, evaluation and recommendation process to maximize economic benefit for all 64 Manitoba First Nations.

6) The maximum number of slots committed to under the current policy framework for casino development should be maintained at 1,500 total for all First Nations casino developments, pending the results of an independent comprehensive market analysis.

This recommendation is in keeping with the Bostrom Report recommendations for a total of 1,500 slot machines; 300 slot machines located in each of up to five casino facilities. Proposing and recommending the maximum number of slot machines for theoretical casino development is difficult. Further, with the Aseneskak Casino operation and the one in development at Brokenhead Ojibway Nation, there are currently 900 slot machines unallocated under this formula. As such, our Committee recommends that the market study referenced in Recommendation #2 be required to propose criteria and the numbers of slot machines and table games which would be appropriate and feasible to support First Nations Casino development.

APPENDIX A

PRESENTERS

Appendix A

Aseneskak Casino Inc.	• Philip Dorion, CEO • Frank Turner, Executive Director, Swampy Cree Tribal Council, Co-Chair • Frank Whitehead, Chief, Opaskwayak Cree Nation, Co-Chair • Clarence Easter, Chief Chemawawin First Nation, Co-Chair • Jerry Ron Campbell, Board Member • Alex Brass, Board Member • Calvin Campeau, Board Member • Ron Ballantyne, Board Member • Cynthia Beadle, Director of Operations • Annie Corbett, Recording Secretary • Jon Gauthier, General Manager
Brokenhead River Casino Resort Inc.	• Ian Cramer, Development Group Chair • Jim Bear, Political Advisor, • Russell Lambert, Chief, Poplar River First Nation • Furlon Barker, Board Chair • John Bunn, BON • Tina Leveque, BON, Chief, Brokenhead Ojibway First Nation
Buffalo Point First Nation	• John Thunder, Chief • Curtis Jonnie, Associate
Long Plains First Nations	• Dennis Meeches, Chief • Vince Perswain, Executive Director, Long Plains First Nations Trust • Brian Pearson, GBR Architects Ltd.
Peguis First Nation	• Louis J. Stevenson, Chief • Lloyd Sinclair, Councillor • Rod Sutherland, Councillor • Glennis Sutherland, Councillor • Sharon Stevenson, Team Leader • Debbie Burka ,Human Resource Liaison
Roseau River First Nation	• Terrance Nelson, Chief

Sioux Valley	• Katherine Whitecloud, Chief (by correspondence only)
Swan Lake First Nation	• Larry Soldier, Chief • Brian McKinney, Councillor • Grant Cameron, Band Member • Jason Daniels, Councillor • Lloyd Cameron, Councillor
Waywayseecappo First Nation	• Murray Clearsky, Chief (written presentation only)
Saskatchewan Liquor and Gaming Authority	• Dale Markewich, Vice President • Cheryl Hanson, Vice President • Jim Engel, Executive Director • Fiona Cribb, Manager Policy & Legislation
Saskatchewan Indian Gaming Authority	• Ed Bellegarde, President & CEO • Wayne Salloum, Vice President, Operations
FNCP Implementation Committee	• Eric Luke • Harvey Bostrom • Elizabeth Stephenson
Manitoba Gaming Control Commission	• Dale Fuga, Chief Operating Officer • Bill Dexter, Director of Native Gaming • Ron Daigle, Director of Technical Integrity • Kadri Irwin, Manager of Registrations • Brent Lusty, Manager of Enforcement
Manitoba Lotteries Corporation	• Peter Hak, Senior Vice President & C.O.O.
Province of Manitoba Aboriginal and Northern Affairs	• Joe Morrisseau, Policy Analyst
Province of Manitoba Department of Finance	• Gordon Greesley, , Analyst Taxation Analysis Branch
Province of Manitoba Department of Justice Civil Legal Services	• Gord Hannon, Crown Counsel
Province of Manitoba Intergovernmental Affairs	• Laurie Davidson, Director Municipal Finance & Advisory Services

APPENDIX B

INTERJURISDICTIONAL RESEARCH

Research compiled by

The Manitoba Gaming Control Commission

June 27, 2003

Appendix B

Acknowledgements

The Manitoba Gaming Control Commission (MGCC) would like to acknowledge the participation and support of the following organizations in the compiling of the research for this report. The information contained in this report represents the MGCC's interpretation of the data supplied by the acknowledged organizations.

Alberta Gaming and Liquor Commission

Alcohol and Gaming Commission of Ontario

British Columbia Lottery Corporation

Gaming Policy and Enforcement Branch (British Columbia)

Ministry of the Attorney General (Ontario)

Nova Scotia Alcohol and Gaming Authority

Nova Scotia Gaming Corporation

Office of Aboriginal Affairs (Nova Scotia)

Ontario First Nations Limited Partnership

Saskatchewan Indian Gaming Authority

Saskatchewan Liquor and Gaming Authority

Executive Summary

The Terms of Reference for the First Nations Casino Project (FNCP) review outlined the need to gather relevant information from other provincial jurisdictions with similar First Nations casino gaming activities and responsibilities. In order to support the deliberations of the FNCP Review Committee the MGCC, in consultation with the committee members, devised a work plan to gather information about the legislative and regulatory regimes, operational policies and practices, experiences and future plans of jurisdictions with First Nations casino stakeholders.

Casino gaming is a provincially delegated activity under the sections 207 (1) (a) (b) of the *Criminal Code of Canada*, with each province enacting specific rules and regulations through legislation and, or agreements to create an operational and regulatory structure in their particular jurisdiction. Acting on the recommendations from the Terms of Reference, the MGCC identified Ontario, Saskatchewan, Alberta and British Columbia as having a casino policy process with sufficient First Nations stakeholder interest to warrant meaningful analysis. Nova Scotia was added to this list due to the fact that a portion of revenues from the Sydney casino project accrues to First Nations.

In order to achieve the research goals outlined by the Review Committee a list of questions was prepared for each province, the MGCC then sought the direct involvement of key stakeholders to assure the accuracy of the information and obtain the necessary supporting documentation. The questions posed to each province were designed to collect pertinent information related to the policies and processes in place in the jurisdictions for selecting, implementing and operating casinos with First Nations stakeholders. To remain consistent with the focus outlined in the Terms of Reference, the questions identified the following areas for comparison: casino regulation, conduct and management of casino gaming, casino and gaming equipment ownership, revenue allocation, site/operator selection, request for proposals process, land status requirements, First Nations approval process, municipal approval process, intergovernmental relationships, operational matters and available statistics on each First Nations casino currently in operation.

The following summarizes the key points for each of the jurisdictional profiles included in the research:

Nova Scotia

- Key Stakeholders: Metropolitan Entertainment Group (MEG)
  Nova Scotia Alcohol and Gaming Authority (NSAGA)
  Nova Scotia Gaming Corporation (NSGC)
  Office of Aboriginal Affairs
- Operations: Nova Scotia has two casino operations, Halifax and Sydney. First Nations involvement includes a 50% share of the Cash Available for Distribution (CAD) from the Sydney casino.
- Legislation and Regulation: NSAGA are responsible for casino regulation in the province, conduct and management authority rests with the NSGC. MEG acts as an agent of the NSGC and owns and operates both casinos, this is an exclusive right which is in effect until 2015. MEG ownership includes all gaming equipment, including slot machines, table games and tracking systems. MEG is subject to the regulatory authority of the NSAGA and operates in accordance with an operating budget and capital budget approved annually by NSGC.
- Revenue and Distribution: Revenue from the Sydney casino is distributed as follows: MEG receives an operator's fee equal to 3% of Gross Operating Revenue; and 10% of a variable Incentive Amount. CAD is established after capital expanses have been removed, the province (through NSGC) collects 100% of this revenue and the Department of Finance allocated 50% for First Nations. The Office of Aboriginal Affairs distributes the 50% CAD to the 11 First Nations that have gaming agreements with the province through a distribution formula that takes into consideration the populations of the First Nations eligible to receive revenue.

Ontario

- Key Stakeholders: Alcohol and Gaming Commission of Ontario (AGCO)
  Ontario First Nations Limited Partnership (OFNLP)
  Ontario Lottery and Gaming Corporation (OLGC)

- Operations: There are five charity casinos, 15 slot facilities at racetracks and three commercial casinos in Ontario. Three of the casino operations in Ontario have First Nations interests associated with them – Casino Rama (commercial casino), Blue Heron and Golden Eagle Casino (charitable casinos).
- Legislation and Regulation: Under the Gaming Control Act and Regulations of Ontario, all casinos are subject to the conduct and management authority of the OLGC and registration by the AGCO.
- Revenue and Distribution: Casino Rama located on Mnjikaning First Nation land in Orillia Ontario is the largest First Nations casino in Canada. Under the Casino Rama Revenue Agreement, 65% of net revenues from the casino are distributed to 133 First Nations in the province through the OFNLP; the remaining 35 % of net revenues are distributed to the Mnjikaning First Nation Limited Partnership (host First Nation) for the purpose of enhancing the Casino Rama complex. There is currently litigation surrounding the 35 % of net revenues which are distributed to the Mnjikaning First Nation Limited Partnership from Casino Rama, as this amount was set for a five year term. The Mnjikaning First Nation Limited Partnership is seeking to maintain this arrangement in perpetuity.
- The Golden Eagle Charity Casino located at Rat Portage, near Kenora Ontario, has entered into a gaming agreement with the Province that allows them to operate table games and bingo at their casino, there are no slot machines. Revenue from this facility must be used for charitable purposes and stays on-reserve.
- Great Blue Heron Charity Casino located on Mississaugas of Scugog Island First Nation in the township of Scugog Ontario is owned by a third party operator (Casino Austria). OLGC is responsible for the conduct and management of the slot machines facility, table games are operated by the Great Blue Heron gaming Company, conduct and management authority resides with The Mississaugas of Scugog Island First Nation which formed a non-profit charitable association to oversee this process. As a host community of a charitable casino slot facility the Mississaugas receives 5% of the revenues from the slot machines, they have agreed to share 30% of that amount with the Scugog Township.

Saskatchewan

- Key Stakeholders: Federation of Saskatchewan Indian Nations (FSIN)
  Saskatchewan Indian Gaming Authority (SIGA)
  Saskatchewan Indian Gaming Licensing (SIGL)
  Saskatchewan Liquor and Gaming Authority (SLGA)
- Operations: There are four casino projects in Saskatchewan with First Nations stakeholder interests, Golden Eagle, Northern Lights, Painted Hand and Bear Claw casinos. All four casinos are located on reserve lands, with conversion taking place after operations had commenced. Land conversion is not a requirement in the Saskatchewan jurisdiction, however this option was adopted by each casino; the conversion process proceeded at a different pace for each casino, taking anywhere from 20 to 41 months to achieve.
- Legislation and Regulation: SLGA regulates all casino gaming in the province; this includes First Nations casinos, as well as maintaining conduct and management authority over the slot machines at First Nations casinos. SIGA provides operational services to SLGA at the four First Nations casinos and conducts and manages the table games through a licence granted by SLGA.
- Revenue and Distribution: The 2002/2003 fiscal year was the beginning of a new revenue formula for First Nations casinos in the province. Net profits are now distributed as follows: $1.5 million is allocated to the First Nations Addictions Rehabilitation Foundation, $250,000 is allocated to the FSIN for each of the next five years to support their work on First Nations gaming jurisdictions, the balance of profits is distributed through the previous formula, with 37.5% to First Nations Trust, 37.5% to Government of Saskatchewan and 25% to Community Development Corporations for SIGA on-reserve casinos. The First Nations Trust also receives 25% of the annual net profits from the two Saskatchewan Gaming Corporation Casinos in the province.
- Future Issues: The policy structure of First Nations casino gaming is currently in a state of review, as SLGA is working with SIGL to permit the latter to assume regulatory functions over SIGA casino operations. The 2002 Framework Agreement between the Province of Saskatchewan and the FSIN has similar provisions related to "Capacity Building" which are designed to assess the capacity of SIGA and SIGL to assume greater control over First Nations casino operations. The core changes would include SIGA assuming conduct and

management responsibilities over slot operations at their casinos, and SIGL assuming regulatory functions from SLGA for SIGA casinos.

Alberta

- Key Stakeholder: Alberta Gaming and Liquor Commission (AGLC)
- Operations: Alberta casinos operate on a charitable casino gaming model. All casino facilities in the province (there are 16) apply for a licence through the ALGC which holds the dual role of regulator and conduct and manage authority.
- Legislations and Regulation: First Nations casinos are licensed by the AGLC under the same terms and conditions as all other casino licensees in the province. Currently there are no First Nations casinos; however there are four applications in the processing stages at this time.
- One of the unique aspects of the Alberta casino process is a predetermined Request for Proposals process. Under the control of the AGLC a prospective casino facility licensee must undergo an 8-step review process to obtain a casino licence. This process is the same for First Nations and non-First Nations applicants. Alberta has also divided the province into six regional boundary areas for casino licensee applications. This permits increased control of the number of licensees operating in any one area and avoids market overlap by any two operations.
- Revenue and Distribution: Alberta has created a special allocation fund for First Nations casino revenues called the "First Nations Development Fund." A total of 40% of revenue from First Nations casino facility licensees that would traditionally go to the Alberta Lottery Fund will now go to the First Nations Development Fund. This fund will be used to support social and economic initiatives in the First Nations community.

BC

- Key Stakeholders: British Columbia Lottery Corporation (BCLC)
  Gaming Policy and Enforcement Branch (GPEB)
- Operations: There are currently 16 community casinos and five destination casinos (four are in operations and one pending final approval) in operation in the province.

- Legislation and Regulation: The Gaming Control Act and Regulations establish BCLC as the sole entity responsible for the conduct and management of all casinos in the province; GPEB is the sole casino regulator in the province. Casino operational services are provided by private service providers who enter into contractual obligations with BCLC and are subject to GPEB regulatory requirements.
- There is one First Nations host community casino located on the St. Mary's reserve. The Campbell River Indian Band is currently seeking approval to be a host community for a destination casino.
- Revenue and Distribution: Revenue distribution in BC occurs through a predetermined universal formula. A 25% share of the slot machine and 40% share of table games net revenue for all casinos accrue to the Casino Service Provider. A 10% share of net revenue for community casinos, $1/6^{th}$ for destination casinos, is paid by the Province to the host local government. A First Nation that hosts a casino project is considered a host local government for revenue distribution purposes.
- Future Issues: There is currently a freeze on the number of casino gaming facilities in the province, however a Request for Proposals (RFP) process was initiated to accommodate the relocation of existing facilities. The RFP takes into consideration: market analysis, local government and public input, and objection and dispute resolution processes for neighbouring governments (First Nations/Municipalities). BCLC has final decision making powers in the RFP relocation process.

Summary Comparisons

The *Criminal Code of Canada* permits each province to establish its own agents to conduct, manage and license gaming activities – and each province has developed unique regulatory and operational structures that enables them to operate casinos, VLTs, slot machines, racetracks, charitable gaming, First Nations gaming and lotteries.

Despite regulatory and operational differences between the provinces, attempts are frequently made to compare various aspects of gaming regimes in different provinces, particularly given the similarity of game availability. The following three charts outline the scope of regulated gaming activities, selected gambling revenue and per capita spending in each province at the end of the 2002/2003 fiscal year.

Table 1

Gaming Activities - By Province										
Type of Gaming	**BC**			**MB**	**ON**		**NB**	**NS**		**NFLD**
Lotteries	•	•	•	•	•	•	•	•	•	•
Scratch Tickets	•	•	•	•	•	•	•	•	•	•
Raffles	•	•	•	•	•	•	•	•	•	•
Break-open Tickets	•	•	•	•	•	•	•	•	•	•
Sport Tickets	•	•	•	•	•	•	•	•	•	•
Charitable Bingo	•	•	•	•	•	•	•	•	•	•
Linked (satellite) Bingo	•	•			•	•				
Casinos	•	•	•	•	•	•		•		
First Nations Casinos	•	•	•	•	•			•		
Slot Machines	•	•	•	•	•	•		•		
VLTs		•	•	•		•	•	•	•	•
EGMs in Race Tracks		•	•	•	•	•				
Horse Racing	•	•	•	•	•	•	•	•	•	•
First Nations Agreements*		•	•	•	•	•	•	•		

* This may include casino, VLTs, commission and revenue sharing agreements.

Summary Comparisons

The *Criminal Code of Canada* permits each province to establish its own agents to conduct, manage and license gaming activities – and each province has developed unique regulatory and operational structures that enables them to operate casinos, VLTs, slot machines, racetracks, charitable gaming, First Nations gaming and lotteries.

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Lotteries	•	•	•	•	•	•	•	•	•	•
Scratch Tickets	•	•	•	•	•	•	•	•	•	•
Raffles	•	•	•	•	•	•	•	•	•	•
Break-open Tickets	•	•	•	•	•	•	•	•	•	•
Sport Tickets	•	•	•	•	•	•	•	•	•	•
Charitable Bingo	•	•	•	•	•	•	•	•	•	•
Linked (satellite) Bingo	•	•			•	•				
Casinos	•	•	•	•	•	•		•		
First Nations Casinos	•	•	•	•	•			•		
Slot Machines	•	•	•	•	•	•		•		
VLTs		•	•	•		•	•	•	•	•
EGMs in Race Tracks		•	•	•	•	•				
Horse Racing	•	•	•	•	•	•	•	•	•	•
First Nations Agreements*		•	•	•	•	•	•	•		

* This may include casino, VLTs, commission and revenue sharing agreements.

The structure and process of casino gaming shows considerable variation across the jurisdictions examined for this report. One of the key aspects of this variation involves the different organizations involved in conduct and management, regulation and operational aspects of the casino process. The following chart illustrates the organizations involved in the casino gaming process for each jurisdiction.

Table 2

First Nations Casino Structure - By Province					
	BC			ON	NS
Regulator	GPEB	AGLC	SLGA	AGCO	NSAGA
Slot Machines	BCLC	AGLC	SLGA	OLGC	NSGC
Table Games	BCLC	Charities	SIGA	First Nations (6)	NSGC
Slot Machines	BCLC	AGLC	SLGA	OLGC	MEG
Table Games	BCLC	Licensee (2)	SIGA	OLGC	MEG
Casino Facility	Operators	Operator	SIGA (4)	OLGC (7)	MEG
First Nations Operator	Yes(1)	Yes (3)	SIGA	Yes	No
Other (3rd Party) Operator	Yes	Yes	Yes (5)	Yes	Yes

1) A First Nation may enter into a Casino Operational Services Agreement with BCLC, however the lone First Nation host casino in existence employs a third party for operational services.
2) Table Games are owned and purchased by the Casino Facility Licensee, unless a third party operator is involved.
3) Currently there are no First Nations casinos; however four applications are in the processing phases. A host First Nation may assume operational duties, or contract out to a third party.
4) The buildings that house SIGA casinos are owned by either a First Nation or Tribal Council. SIGA pays rent for the buildings.
5) SIGA may contract out operational services to third parties.
6) First Nations that have entered into gaming agreements with the Province may conduct and manage table games at charity casinos.
7) Ontario is currently in litigation with respect to casino ownership.

Legislation, Regulations and Agreements play a vital role in determining the policy structure of a province's casino gaming. The following chart illustrates the various Agreements that impact First Nations stakeholder input in the casino process for each province.

Table 3

First Nations Stakeholder Input - By Province			
	Agreements	**Policy**	**Future Isssues**
[redacted]	BCLC Casino Operational Services Agreement	Establishes the operating procedures for all casinos in the province, including First Nations casinos	Province is currently in a relocation policy for casino facilities involving First Nations and non-First Nations casinos
[redacted]	Casino Terms and Conditions	Sets the process and all operating and regulatory procedures for First Nations and non-First Nations casino licensees.	Currently there are four First Nations applications in the process of obtaining a casino licence.
[redacted]	1) Casino Operating Agreement (SLGA - SIGA) 2) 2002 Framework Agreement (Province of Saskatchewan and FSIN) 3) SIGL Regulatory Agreement (SLGA and SIGL)	1) Sets out the operating and regulation aspects of SIGA casinos. 2) Establishes the revenue and distribution formulas for SIGA casinos, as well as future First Nations casino issues. 3) Contains the framework for transition of certain regulatory responsibilites from SLGA to SIGL.	All three documents have review clauses, which call for the evaluation of regulatory and operational policies.
ON	1) Casino Rama Revenue Agreement (Province of Ontario - OLGC - OFNLP - Mnjikang First Nation Limited Partnership) 2) Gaming Agreements (Province of Ontario and () Band within the Indian Act)	1) Sets the revenue distribution formula and core regulatory and conduct and manage responsibilities for Casino Rama. 2) Allows First Nations to conduct and manage charitable activities, including bingo and table games at charity casinos.	1) This agreement is currently subject to litigation over ownership and revenue distribution
NS	Gaming Agreement (Province of Nova Scotia and () Band within the Indian Act	A First Nation must be signatory to this Agreement in order to receive a share of revenue from the Sydney Casino.	Currently only 11 of 13 First Nations in Nova Scotia have signed Agreements

The structure and process of casino gaming shows considerable variation across the jurisdictions examined for this report. One of the key aspects of this variation involves the different organizations involved in conduct and management, regulation and operational aspects of the casino process. The following chart illustrates the organizations involved in the casino gaming process for each jurisdiction.

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Slot Machines	BCLC	AGLC	SLGA	OLGC	NSGC
Table Games	BCLC	Charities	SLGA	First Nations	NSGC
Slot Machines	BCLC	AGLC	SLGA	OLGC	MEGC
Table Games	BCLC	Licensee	SLGA	OLGC	MEGC
Casino Facility	Operators	Operator	SLGA	OLGC	MEGC
First Nations Operator	Yes	Yes	SLGA	Yes	No
Other (3rd Party) Operator	Yes	Yes	Yes	Yes	Yes

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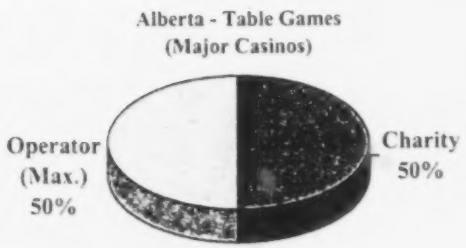
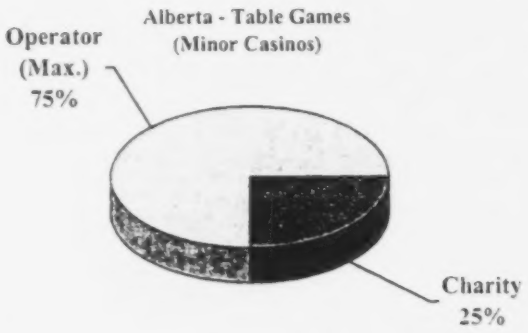
	Agreements	**Policy**	**Future Issues**
BC	BCLC Casino Operations Services Agreement	Establishes the operating procedures for all casinos in the province, including First Nations casinos	Province is currently in a relocation policy for casino facilities involving First Nations and non-First Nations casinos
[redacted]	Casino Terms and Conditions	Sets the process and all operating and regulatory procedures for First Nations and non-First Nations casino operators	Currently there are four First Nations applications in the process of obtaining a casino license
[redacted]	1) Casino Operations Agreement SLGA / SGAA 2) 2002 Framework Agreement Province of Saskatchewan and FSIN's 3) SGH Agreement Agreement SLGA and SGH	1) Sets out the operating and regulation of agents of SLGA casinos 2) Establishes the revenue and distribution formulas for SLGA casinos, as well as future First Nations casino issues 3) Establishes the framework for operation of certain regulatory responsibilities from SLGA to SGH	All three agreements have review clauses, which call for the evaluation of regulatory and operational policies
ON	1) Casino Rama Services Agreement (Province of Ontario, OLG, CNE, CNLP, Mnjikaning First Nation Limited Partnership) 2) Gaming Agreements (Province of Ontario and 17 Bands within the Indian Act)	1) Sets the revenue distribution between CNE and CNLP. Mnjikaning First Nation is entitled to a share of revenue from the Casino Rama 2) Allows First Nations to conduct and manage charitable activities, including Registered Table games (RTG) casinos	1) This agreement is currently subject to litigation over ownership and revenue distribution
NS	Gaming Agreement (Province of Nova Scotia and 13 Bands within the Indian Act)	A First Nation must be signatory to this agreement in order to receive a share of revenue from the Scotia Casino	Currently only 11 of 13 First Nations in Nova Scotia have signed Agreements

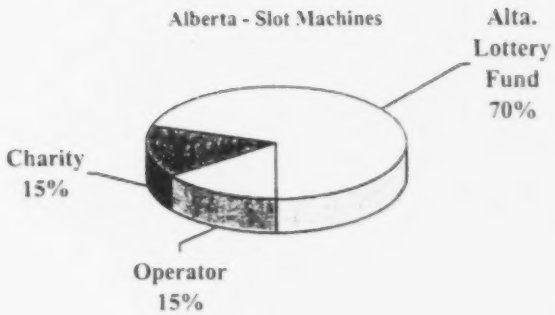
Revenue Graphs

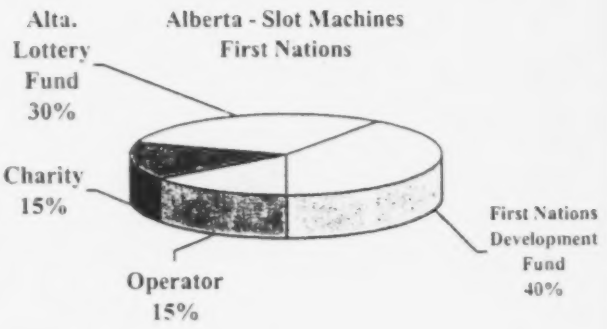
The calculation of revenue in each jurisdiction was one of the focal points for this report. In comparing the accruement of revenue across jurisdictions is must be noted that the formulas for the calculation of revenue, especially net revenue, are unique to each province. Further, there are instances where multiple formulas for the calculation of revenue are present in a particular jurisdiction. The following graphs show the different methods of revenue calculation and accruement in each jurisdiction.

Alberta



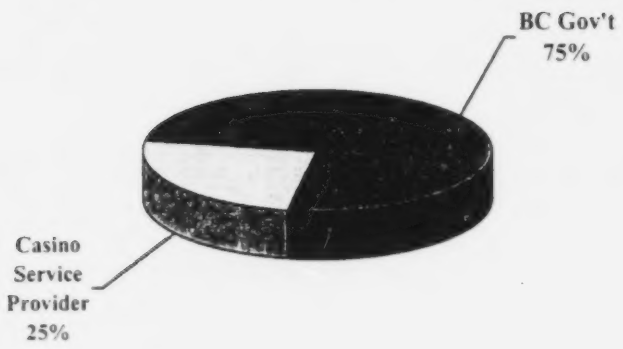






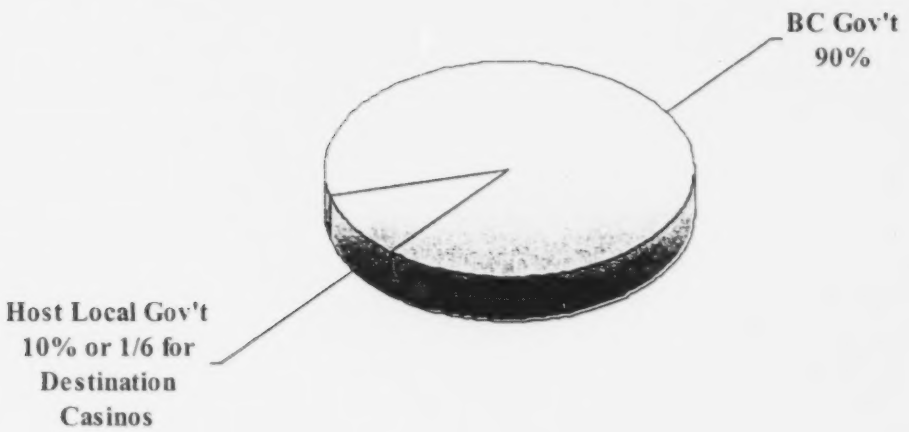
BC

BC - Slot Machines Net Revenue



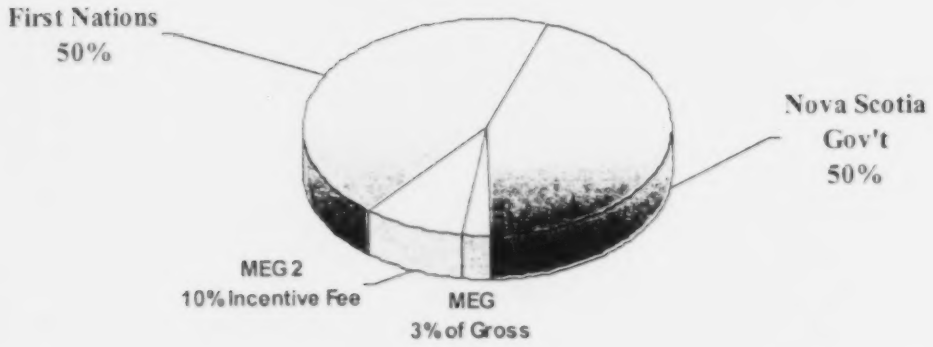
BC -Table Games Net Revenue

BC -Host Government Share Net Revenue

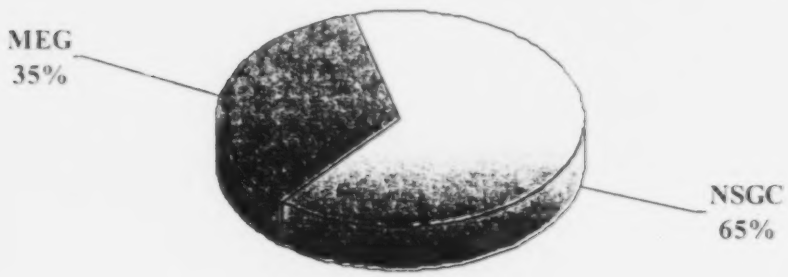


Nova Scotia

Nova Scotia - Cash Available for Distribution (Sydney)

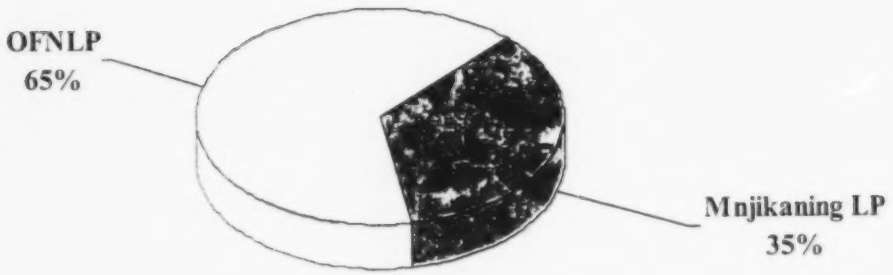


Nova Scotia - Cash Available for Distribution (Halifax)



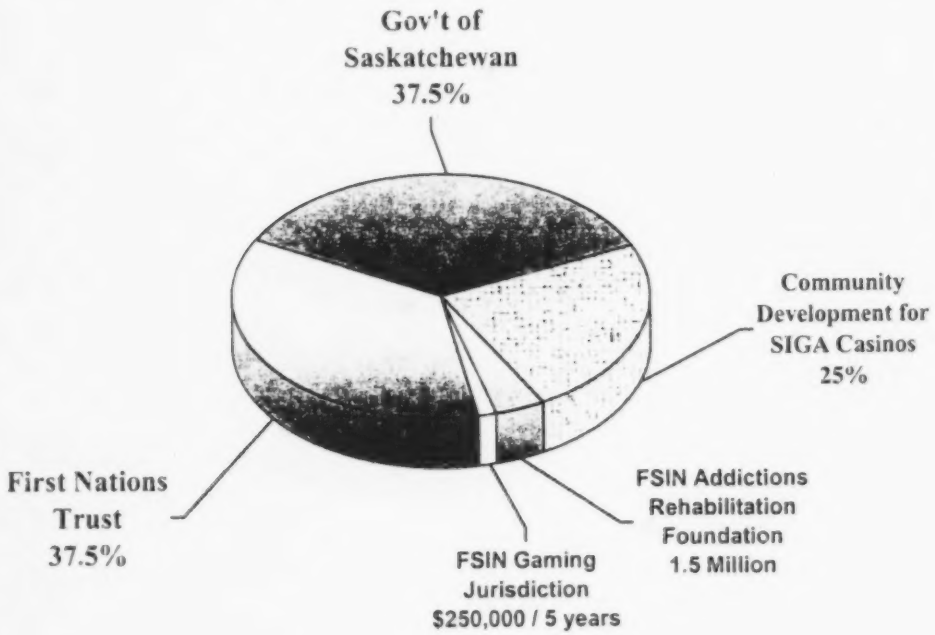
Ontario

Casino Rama - Net Revenue Distribution



Saskatchewan

Saskatchewan - SIGA Casinos Net Revenue Distribution



Conclusions

The First Nations casino process in each of the jurisdictions examined shows the wide variation in policy, structure and operation of each province's approach to First Nations casino gaming. First Nations input fluctuates from the basic gaming agreements that allow revenue distribution in Nova Scotia, to the multiple Government to Government agreements that exist in Saskatchewan. The Ontario government's Agreement with 133 First Nations under the Casino Rama Revenue Agreement, is vastly different than the approach adopted in Alberta and British Columbia who negotiate Agreements on a per casino basis and do not have specific agreements for First Nations casinos.

There are some similarities across jurisdictions as numerous provinces allow the delegation of conduct and management authority over table games to flow to operators, First Nations or otherwise. There is also a strong regulatory framework in place in all jurisdictions and a clear separation, except in Alberta, between regulators, conduct and management and operational service providers.

The delegation of overall casino gaming authority to the provinces independent of one another has led to a unique policy structure for casino gaming in each province. While specific aspects of casino gaming, including First Nations casinos can be compared, the overall policy generated by each province is as unique as the individual casinos over which they have jurisdiction.

APPENDIX C

TERMS OF REFERENCE

Appendix C

Background:

In mid-November 2002, the Assembly of Manitoba Chiefs (AMC) and the Province of Manitoba agreed to establish a two-member committee to review and evaluate the First Nations Casino Project (FNCP); identify areas of concern and recommend solutions to overcome the concerns and problem areas.

The FNCP was initiated in response to the recommendations of the 1997 First Nations Gaming Policy Review (Bostrom Report). (A copy of the FNCP terms of reference is attached.) A Selection Committee, co-chaired by Martin Freedman, representing the province, and Ron Nadeau, representing the AMC, was established in December 1999; the Request for Proposals (RFP) was released in January 2000; the proposals were submitted by March 31; the recommendations for the development of five proposals were completed on May 31; and implementation of the recommendations were begun in late June.

Status:

Since June 2000, one casino has opened; one proposal is still in development; three proposals will not proceed. Given that the FNCP was seen as an economic development opportunity for Manitoba First Nations, the results of this initiative have been disappointing. Publicly, there is an awareness of the challenges faced by First Nations in attempting to establish on-reserve casino operations within existing municipalities and the impact this requirement had on the success of three of the proposals. The proposal still in development also faces challenges, as does the casino now operating. However, these challenges are not related to "urban reserve" issues.

Recent presentations by the AMC and by Aseneskak Casino Inc. have identified several issues perceived as impinging on the success of the FNCP generally, and the casino more specifically. Further, the Provincial Designate has identified operational, business and market realities affecting the FNCP, implementation of the Selection Committee recommendations and Aseneskak's operations. These issues may best be described as falling into three categories:

1. implementation of Bostrom Report and Selection Committee activities;
2. sovereignty and self-determination; and
3. business and market capabilities/capacity.

The distinction between the last two issues is critical; in accomplishing this review the committee members must be mindful of factors attributable to the success or failure of the FNCP as an economic development initiative.

Terms of Reference:

The committee's first responsibility was to develop terms of reference to guide this review. These terms were presented to the AMC and the province and agreed to by both parties before the committee proceeded with implementation. These terms will guide the committee members

and any external advisors directed by the committee in completing their review and evaluation of the FNCP.

Scope of Review and Evaluation:

The committee is directed to examine the following:

1. **Selection Committee and Implementation Committee Process and Outcome**
    - Bostrom Report/Terms of Reference
    - Request for Proposals
    - Proposal Preparation and Submission
    - Mandatory Requirements: First Nations proponents only, located on-reserve land, regulatory framework compliance
    - Evaluation and Recommendations
    - Consideration of next steps

Expected Outcome: An evaluation of the Selection Committee and Implementation Committee process, identifying strengths and limitations, based on the terms of reference established by the province and the AMC, Nov. 18, 1999.

2. **Legislative and Regulatory Framework**
    - Criminal Code and Provincial Legislation
    - Comprehensive Provincial Framework Agreement
    - Conduct and Management Agreement
    - The Manitoba Gaming Control Act
    - The Manitoba Lotteries Corporation Act
    - First Nations Gaming Commission Agreements

Expected Outcome: An evaluation of the current legislative and regulatory framework. Deliberations on this issue must include consideration of legislative amendment of the Gaming Control Act and proposed First Nation Gaming Act.

3. **Financial/Business Factors**
    - Taxation
    - Revenue Sharing Formula and Mechanism
    - Business Partnerships – First Nations Consortiums, private partnerships

Expected Outcome: An evaluation of issues and conditions impacting financial and business outcomes and possible measures to mitigate any issues.

Consultation and Research:

Targeted Consultations: The committee is expected to conduct targeted consultations with stakeholder groups, expert advisors, financial institutions, casino proponents, provincial agencies and other interested groups and individuals. The committee will establish a formal consultation plan, including timelines and expected outcomes but at a minimum, will include the following:

a. Working through the Provincial Tribal Councils, the committee intends to seek input from First Nations leadership including successful and unsuccessful proponents in the FNCP.

b. Provincial officials from Finance, Aboriginal and Northern Affairs, Justice, Manitoba Lotteries Corporation and Manitoba Gaming Control Commission.

c. Implementation Committee members.

d. Legal counsels to First Nation Casino Proponents.

e. First Nations Bank and Peace Hills Trust.

f. Others as deemed necessary by the Committee.

Jurisdictional Review: The committee is expected to gather relevant information and advice from jurisdictions with similar First Nations casino gaming activities and opportunities. Attention should focus on legislative and regulatory regimes, operational policies and practices, experiences and future plans. It is recommended that the provinces of Ontario, Saskatchewan, Alberta and British Columbia be included in this review.

PricewaterhouseCoopers Review: At present, a review of Aseneskak's business operations is underway. There may be opportunities to use data from this exercise to inform the deliberations of this committee. It should be noted that the findings and results of this review are considered to be confidential as they relate to financing and business planning.

Report Submission:

The committee's report and recommendations will be presented to Grand Chief of the Assembly of Manitoba Chiefs Dennis White Bird and to Tim Sale, minister responsible for the Gaming Control Act on behalf of the province.

It is estimated that an interim report would be submitted by April 30, 2003, with the final report to be presented by June 30, 2003.

APPENDIX D

Key Dates – First Nations Casino Project

Chronology

Appendix D

- **November 18, 1999** - the Province of Manitoba (Province) and the Assembly of Manitoba Chiefs (AMC) sign a Letter of Understanding agreeing to the Terms of Reference – Selection Committee, First Nations Gaming Facilities.
- **December 6, 1999**, - the Province and the AMC finalize negotiations for the terms of the casino proposal submission process, including the evaluation and selection process.
- **December 15, 1999**, - the Province and the AMC jointly establish the Manitoba First Nations Casino Project Selection Committee.
- **January 12, 2000** - AMC passes a motion on the revenue sharing formula for First Nations Casinos – forwarded to the Province on January 18, 2000.
- **January 19, 2000** - the Selection Committee publishes the Manitoba First Nations Casino Project Request for Proposals (RFP).
- **February 21, 2000** - deadline for submitting requests for information or further clarification to the Selection Committee.
- **February 22, 2000** - Addendum to Request for Proposals extending the length of the operating agreements from four to seven years.
- **March 13 and 15, 2000** - the Selection Committee releases the responses to the submitted requests for clarification or additional information.
- **March 31, 2000, 2:00PM** - deadline for submission of proposals.
- **March 31 to May 31, 2000** – the twelve proposals are reviewed and evaluated, and recommendations and final report prepared in accordance with the timetable set out by the Province and the AMC.
- **May 31, 2000** - submission of the Selection Committee Report and Recommendations to the Province and the AMC. The Selection Committee recommends the maximum number of five casinos permitted under the RFP.
- **June 1, 2000** - the Province and the AMC accept and publicly release the report and recommendations of the Selection Committee.
- **June 20, 2000** - the Province and AMC announces appointments to the First Nations Casino Project Implementation Committee.
- **December 7, 2001** - Swan Lake First Nation formally withdraws their proposal to develop a casino proposed in Headingley following a second community plebiscite against the project. This project will not proceed.

Appendix E

April 1, 2003

"Name" First Nation

Dear:

As you may be aware the Assembly of Manitoba Chiefs (AMC) and the Province of Manitoba have established a committee to review and evaluate the First Nations Casino Project (FNCP). The Committee has been asked to identify areas of concern or strengths and then to provide recommendations to the AMC and the Province. (A copy of the Terms of Reference outlining the scope of the review will be forwarded shortly.)

As an important part of the review process the Committee is conducting consultations with stakeholders and other interested parties to inform the Committee's deliberations and the development of its recommendations.

We are seeking the direct involvement of Manitoba's First nations. We invite you to provide a written and oral submission to the Committee related to any of the following: the RFP, the Selection Process, the Implementation Process, land conversion or the agreements associated with the First Nations Casino Project.

The Committee has set aside the dates of April 14, 15, 16 and 17, 2003 to meet with interested First Nations. Please contact Susan McIvor at (204) 954-9452 by Friday April 11, 2003 to schedule a time for representatives from your organization to speak with the Committee in Winnipeg or alternately to arrange to forward your input to the Committee in writing.

We look forward to your participation in the First Nations Casino Project Review.

Yours truly,

Per: Lloyd W. Stevenson / F. J. O. (Rick) Josephson, Co-Chairs
Joint Review and Evaluation Committee
2000 First Nations Casino Project

Appendix E

April 1, 2003

"Name" Tribal Council

Dear :

As you may be aware the Assembly of Manitoba Chiefs (AMC) and the Province of Manitoba have established a committee to review and evaluate the First Nations Casino Project (FNCP). The Committee has been asked to identify areas of concern, issues and strengths and then to provide recommendations to the AMC and the Province. (A copy of the Terms of Reference outlining the scope of the review will be forwarded shortly.)

As an important part of the review process the Committee is conducting consultations with stakeholders and other interested parties to inform the Committee's deliberations and the development of its recommendations.

We are seeking the direct involvement of Manitoba's Tribal Councils. We invite you to provide a written and oral submission to the Committee related to any of the following: the RFP, the Selection Process, the Implementation Process, land conversion or the agreements associated with the First Nations Casino Project.

We have also contacted some of your member First Nations, **(Names of Member First Nations),** to present input related to their experiences and involvement in the First Nations Casino Project to the Committee.

The Committee has set aside the dates of April 14, 15, 16 and 17, 2003 to meet with interested Tribal Councils. Please contact Susan McIvor at (204) 954-9452 by Friday April 11, 2003 to schedule a time for representatives from your organization to speak with the Committee or alternately to arrange to forward your input to the Committee in writing.

We look forward to your participation in the First Nations Casino Project Review.

Yours truly,

Per: Lloyd W. Stevenson / F. J. O. (Rick) Josephson, Co-Chairs
Joint Review and Evaluation Committee
2000 First Nations Casino Project

ASSEMBLY OF MANITOBA CHIEFS

Manitoba

REPORT OF THE JOINT COMMITTEE TO REVIEW AND EVALUATE FIRST NATIONS CASINO PROJECT 2000

Signed on behalf of the Province:

F. J. O. (Rick) Josephson
Joint Chair
Report of the Joint Committee
to Review and Evaluate
First Nations Casino Project 2000

Date: Oct 6/03

Witness:

A McKenzie

Signed on behalf of the Assembly of Manitoba Chiefs:

Lloyd Stevenson
Joint Chair
Report of the Joint Committee
to Review and Evaluate
First Nations Casino Project 2000

Date: Oct 6/03

Witness:

A McKenzie